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No. \_\_\_\_\_

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1984

IN RE: DANNY RAY BUREN, ANNIE LAURA JONES,  
MARIANNE FRANCIS HENDERSON, BOB DWAIN PENOVICH,  
ANETRICA KATHERINE WOODS, GUY T. AND  
MABEL ADELIA DRAKE, WALLACE HORNAL,  
*Debtors*

HENRY E. HILDEBRAND, III,  
STANDING CHAPTER 13 TRUSTEE,  
*Petitioner*

v.

THE SOCIAL SECURITY ADMINISTRATION,  
*Respondent*

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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71 pp



## QUESTION FOR REVIEW

Whether individuals who have voluntarily petitioned for relief under Chapter 13 of the Bankruptcy Reform Act, 11 U.S.C. § 1301 *et seq.* and have not exempted social security benefits from their respective estates pursuant to 11 U.S.C. § 522(d)(10)(A) and (C) are entitled to income deduction orders requiring the Social Security Administration to pay specified portions of their social security benefits to the Standing Chapter 13 Trustee under a debt adjustment plan duly confirmed by the Bankruptcy Court.

## PARTIES

Petitioner Henry E. Hildebrand, III, is the Standing Chapter 13 Trustee for the Middle District of Tennessee. He is trustee for Chapter 13 debtors: Danny Ray Buren, Annie Laura Jones, Marianne Francis Henderson, Bob Dwaine Penovich, Anetrica Katherine Woods, Guy T. and Mabel Adelia Drake, Wallace Hornal. All of these individuals receive income from the Social Security Administration, Respondent in this proceeding.





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**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

---

Henry E. Hildebrand, III, Standing Chapter 13 Trustee for the Middle District of Tennessee, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit in these cases relative to the reversal of the ruling of the United States District Court for the Middle District of Tennessee requiring the Social Security Administration to honor income deduction orders from the Standing Chapter 13 Trustee in cases involving debtors whose income consists of social security benefits.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 725 F.2d 1080 (6th Cir. 1984) and is reproduced in the Appendix, *infra*, pages 1a-15a. The opinion of the United States District Court for the Middle District of Tennessee is reported at 6 Bankr. 744 and is reproduced in the Appendix, *infra*, pages 18a-26a. The opinion of the United States Bankruptcy Court for the Middle District of Tennessee is reported at 4 Bankr. 109 and is reproduced in the Appendix, *infra*, pages 28a-37a.

## JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on January 23, 1984. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

## STATUTORY PROVISIONS

The applicable provision of § 1325 of the Bankruptcy Reform Act of 1978 provides as follows:

§ 1325. Confirmation of Plan.

(b) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

The applicable provisions of § 101 of the Bankruptcy Reform Act of 1978 provide as follows:

§ 101. Definitions. In this title—

(14) 'entity' includes person, state, trust governmental unit;

(21) 'governmental unit' means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States, a State, a Common-

wealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government;

(24) 'individual with regular income' means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker;

The applicable provision of § 541 of the Bankruptcy Reform Act of 1978 provides as follows:

§ 541. Property of the Estate.

(a) The commencement of a case under § 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located:

(1) Except as provided in subsections (b) and (c) (2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

\* \* \* \*

(c) (1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a) (1), (a) (2), or (a) (5) of this section notwithstanding any provision—

(A) that restricts or conditions transfer of such interest by debtor;

The applicable provision of § 1306 of the Bankruptcy Reform Act of 1978 provides as follows:

§ 1306. Property of the Estate.

(a) Property of the estate includes, in addition to the property specified in § 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed or converted to a case under chapter 7 or chapter 11 of this title whichever occurs first;

The applicable provision of § 522 of the Bankruptcy Reform Act of 1978 provides as follows:

§ 522. Exemptions.

(b) Notwithstanding § 541 of this title, an individual debtor may exempt from property of the estate either—

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) Any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than any other place; and

\* \* \* \*

(d) The following property may be exempted under subsection (b)(1) of this section:

\* \* \* \*

(10) The debtor's right to receive—

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

\* \* \* \*

(C) a disability illness or unemployment benefit;

The applicable provision of § 407 of the Social Security Act of 1935 provides as follows:

§ 407. Assignment.

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the

moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

The applicable provision of § 405(j) of the Social Security Act provides as follows:

(j) Direct or Indirect Certification.

When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.

#### STATEMENT OF THE CASE

This proceeding arose when eight individuals who receive disability benefits under Title II of the Social Security Act, §§ 401-433, or supplemental security income benefits under Title XVI, 42 U.S.C. §§ 1381-1383, voluntarily petitioned for relief under Chapter 13 of the Bankruptcy Reform Act, 11 U.S.C. § 1301 *et seq.* (App. p. 2a). Each debtor's plan included a provision for payment of his or her social security benefits to the Standing Chapter 13 Trustee. (App. p. 19a). All cases were confirmed without objection by the United States Bankruptcy Court for the Middle District of Tennessee, and income deduction orders were issued by the court directing the Social Security Administration to pay a portion of the debtors' monthly benefits to the Standing Chapter 13 Trustee. (App. pp. 38a-53a).

The Social Security Administration moved for relief from these orders, but was unsuccessful in obtaining such relief from either the Bankruptcy Court or from the United States District Court for the Middle District of Tennessee on appeal. (App. pp. 18a-37a). In substance, both courts held that the provisions of the Bankruptcy



Reform Act of 1978 superseded any arguably inconsistent provisions of the Social Security Act, specifically 42 U.S.C. § 407. (App. pp. 18a-37a). The decision of the United States District Court for the Middle District of Tennessee was thereafter reversed by the United States Court of Appeals for the Sixth Circuit, and the Bankruptcy Court was directed to vacate the income deduction orders. (App. pp. 2a-17a).

### REASONS FOR ALLOWANCE OF WRIT

The decision of the United States Court of Appeals for the Sixth Circuit, in reversing the decision of the United States District Court for the Middle District of Tennessee, is in direct conflict with the decision of the United States Court of Appeals for the Eleventh Circuit in the case of *United States v. Devall*, 704 F.2d 1513 (11th Cir. 1983). In *Devall*, the Court of Appeals held that the Social Security Administration is subject to Bankruptcy Court income deduction orders that require payment of all or some portion of the debtor's social security benefits to a Standing Chapter 13 Trustee. The court expressly concluded that the provisions of the Bankruptcy Reform Act prevailed over the anti-assignment provisions of the Social Security Act, specifically 42 U.S.C. § 407.

In contrast, the court below found that the Bankruptcy Reform Act of 1978 did not repeal by implication § 407 of the Social Security Act in Chapter 13 cases. Accordingly, it held that the Social Security Administration was not subject to income deduction orders from the Standing Chapter 13 Trustee. (App. p. 14a). Therefore, the decision of the United States Court of Appeals for the Sixth Circuit is in direct conflict with a decision of the United States Court of Appeals for the Eleventh Circuit on an identical matter of federal law. Because one of the prime purposes of certiorari jurisdiction is to bring about uniformity of decisions on matters of federal law among the federal courts, certiorari should



be granted in this case. See, e.g., *Northeastern Pennsylvania National Bank & Trust Co. v. United States*, 387 U.S. 213, 217 (1967).

The court below failed to recognize that to the extent specific statutory provisions of the Bankruptcy Code (e.g., 11 U.S.C. §§ 541(a)(1), 541(c)(1), 1306, and 522) cannot be harmonized with 42 U.S.C. § 407, the later and more specific statutory provisions of the Bankruptcy Code operate to amend the anti-assignment provisions of the Social Security Act.<sup>1</sup> 42 U.S.C. § 407 provides that the right of any person to future payment of social security benefits shall not be transferable or assignable, or subject to the operation of any bankruptcy or insolvency law. In contrast, the Bankruptcy Reform Act of 1978 provides that upon confirmation of a Chapter 13 plan "the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee." 11 U.S.C. § 1325(b). It is undisputed that the provision for income deductions applies to government agencies such as the Social Security Administration. 11 U.S.C. § 101(14)(21). Therefore, while the anti-assignment provision attempts to prohibit assignment of social security benefits with limited exceptions not at issue here, the Bankruptcy Code authorizes direct income deductions from government agencies such as the Social Security Administration.

The intent of Congress in expanding the class of debtors eligible for Chapter 13 relief to include individuals who

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<sup>1</sup> Alternatively, the court below failed to recognize that the Bankruptcy Code and the Social Security Act may be harmonized by a proper interpretation of 42 U.S.C. § 405(j), which provides that social security benefits may be paid to a third party payee (other than the social security recipient) when the interest of the applicant entitled to a payment would be served thereby. Therefore, the Social Security Administration is expressly authorized by the terms of the Social Security Act to make payments to the Chapter 13 Trustee, and should comply with the income deduction orders.

live on social security incomes was properly noted by the court below. (App. pp. 3a-4a). The court also found that social security benefits were properly included in the Chapter 13 estate, and could be exempted pursuant to § 522(d)(10). (App. pp. 4a-6a). While the court clearly recognized Congress' intent to expand Chapter 13 eligibility to include individuals receiving social security benefits and recognized that those benefits were property of the estate, it erroneously concluded that an income deduction order was not necessary to further Congress' purpose in expanding Chapter 13 eligibility. (App. pp. 11a-12a). Petitioner respectfully submits that this conclusion overlooks both the main purpose behind § 407 of the Social Security Act, and the voluntary nature of a Chapter 13 proceeding.

The policy reasons behind § 407 were aptly set forth by the court in *United States v. Devall*, 704 F.2d 1513 (11th Cir. 1983):

By insulating social security benefits from assignment or seizure, section 407 attempts to insure that recipients have the resources necessary to meet their most basic needs. . . . Thus, when the assignment has the effect of denying the debtor basic resources, section 407 is properly invoked. . . . However, when the debtor's ability to care for himself or herself is not implicated, section 407 need not be applied.

*United States v. Devall*, at 1516-1517 (citations omitted).

These important policy considerations are not affected by a voluntary assignment of benefits by a debtor to the Chapter 13 trustee since it will not affect the debtor's ability to secure care for himself or herself. As the court in *United States v. Devall* noted, the plan of debt adjustment must be reviewed and approved by a bankruptcy judge. A plan will not be approved unless the court is convinced that the plan of repayment is feasible and will work no undue hardship on the debtor and his dependents. *United States v. Devall*, at 1517. Thus, a determi-

nation as to whether a needy debtor needs to retain funds for survival will be made prior to confirmation of a Chapter 13 plan containing an income deduction order.

Similarly, all applications for attorney's fees in Chapter 13 are subject to review by the Bankruptcy Court. Moreover, even if an income deduction recipient voluntarily signs his check over to the Chapter 13 trustee, this will not prevent the funds from being consumed by attorney's fees as the court below suggested, since the debtor's attorney will still be paid by the trustee unless the debtor appears *pro se*. Finally, the court's concern that an income deduction order would intrude upon the important protection of social security benefits from attachment and garnishment is not viable when one considers that Chapter 13 is a voluntary proceeding. "A debtor cannot be forced to submit his social security benefits to the jurisdiction of the court. . . . Moreover, a debtor under Chapter 13 has a non-waivable right to dismiss his case under Chapter 13. For this reason, the debtor's benefits may not be subject to seizure in any legal process against the debtor unless and except to the extent he so desires." *United States v. Devall*, at 1517.

Accordingly, the remaining issue is whether the burden on the Social Security Administration if it is required to comply with income deduction orders in the same manner as all other employers and other governmental entities is so great that it should outweigh the policy reasons behind expansion of Chapter 13 eligibility and the purpose behind the anti-assignment provision of the Social Security Act. Petitioner respectfully draws this court's attention to the conclusion of the Eleventh Circuit in this regard:

Because the Administration would like to avoid the administrative burden of compliance, it seeks to invoke the anti-assignment provision for its own benefit, and not for the benefit or protection of the debtor's social security recipients. Indeed, it stretches

credibility that the Administration could protect the best interest of recipients by denying them the opportunity to use Chapter 13, an opportunity Congress clearly intended would be available.

*United States v. Devall*, at 1517.

As shown above, application of § 407 to prohibit income assignments in Chapter 13 cases would frustrate the purpose behind the Bankruptcy Code. Accordingly, one statute must bend to accommodate the other. "A narrow implied limitation of section 407 appears to be the only way to effectuate the operation of a Chapter 13 plan for an individual whose regular income consists of social security benefits." *United States v. Devall*, at 1518. While repeal by implication is not normally favored, it is generally recognized that where provisions in two acts are in conflict, the later act constitutes an implied repeal of the earlier one to the extent of the conflict provided the intention of the legislature to repeal is clear and manifest. *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 154 (1976).

The omission of 42 U.S.C. § 407 from the list of amended statutes in Title III of the Bankruptcy Reform Act, Pub. L. No. 75-598, 92 Stat. 259-459, does no violence to a holding that the comprehensive scheme of the Bankruptcy Code amends by implication any inconsistent provisions of the Social Security Act. The Bankruptcy Reform Act was clearly intended to change prior law. Title III of the Act included a list of statutes that had been specifically amended or repealed. There is no indication that the list in Title III was intended to be exclusive. Quite the contrary, the legislative history of Title III of the Bankruptcy Reform Act reveals that the list of amended provisions was included to specifically illuminate only three problem areas, none of which are relevant here. H.R. REP. NO. 95-595, 95th Cong., 1st Sess. 285 (1977). The anti-assignment provisions of the Social Security Act do not present any of the problems

found in the three categories that Congress singled out for specific mention. The failure to mention 42 U.S.C. § 407 in this list cannot be construed as evidencing a Congressional intent that social security benefits are not within a debtor's Chapter 13 estate.

In contrast, the intent of Congress is clear both from its expansion of Chapter 13 relief and from its enactment of § 541(c)(1)(A) of the Bankruptcy Code, which states that an interest of the debtor in property becomes property of the estate notwithstanding any provision that restricts or conditions transfer of that interest by the debtor. Congress could only have intended that enactment of this section would forestall any argument that restrictions such as the anti-assignment provision should operate to deny a debtor the benefit of an income deduction order.

This court has granted certiorari in the past when presented with a conflict between decisions of two United States Courts of Appeals which relate to a matter of importance in the administration of the Bankruptcy Act. *City of New York v. Saper*, 336 U.S. 328, 329 (1949). Similarly, certiorari should be granted in the instant case because of the important nature of the issue in conflict. As the court below noted, the purpose of expanded Chapter 13 jurisdiction under the new Bankruptcy Code was to increase substantially the classes of persons eligible for relief under Chapter 13. (App. p. 4a). A holding that income deduction orders are not available to persons within the expanded class frustrates the intent of Congress and defeats a major purpose of the Bankruptcy Code.

### CONCLUSION

The United States Court of Appeals for the Sixth Circuit, by reversing the decision of the United States District Court for the Middle District of Tennessee, incorrectly determined that the Social Security Administra-

tion was not subject to income deduction orders. That decision is in direct conflict with the decision of the United States Court of Appeals for the Eleventh Circuit as set forth in the case of *United States v. Devall*. This proceeding involves an important issue of bankruptcy administration. Therefore, a writ of certiorari should issue to review the judgment and opinion of the Sixth Circuit.

Respectfully submitted,

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# **APPENDIX**



APPENDIX

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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No. 80-5427

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IN RE: DANNY RAY BUREN, ANNIE LAURA JONES,  
MARIAN FRANCES HENDERSON, BOB DWAIN PENOVICH,  
ANETRICIA KATHERINE WOODS, GUY T. AND  
MAYBELLE ADELIA DRAKE AND WALLACE HORNAL,  
*Debtors-Appellees,*

HENRY E. HILDEBRAND III, STANDING TRUSTEE,  
CHAPTER XIII,  
*Appellee,*

v.

THE SOCIAL SECURITY ADMINISTRATION,  
*Appellant.*

On Appeal from the United States District Court  
for the Middle District of Tennessee

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Decided and Filed January 23, 1984

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Before: KEITH and MARTIN, Circuit Judges; and  
ALDRICH, District Judge.\*

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\* Honorable Ann Aldrich, United States District Judge for the  
Northern District of Ohio, sitting by designation.



ALDRICH, District Judge. In this appeal we must determine whether the Bankruptcy Reform Act of 1978, 11 U.S.C. § 1-1330, repealed by implication the provision of the Social Security Act of 1935, barring the assignment of benefits, 42 U.S.C. § 407. The district court held that the Social Security Administration is subject to bankruptcy court income deduction orders and affirmed a ruling compelling the Administration to ignore section 407 and pay all or some of seven debtors' social security benefits to a bankruptcy trustee. Consideration of the statutes and legislative history involved, as well as recent relevant Congressional action, requires that we reverse and order the bankruptcy court to dissolve the income deduction orders.

The relevant facts are simple. Seven individuals who receive disability benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-433, or supplemental security income benefits under Title XVI, 42 U.S.C. §§ 1381-1383, filed voluntary petitions with the bankruptcy court under Chapter 13 of the Bankruptcy Code, 11 U.S.C. §§ 1301-1330. In each case, the debtor informed the bankruptcy court that the benefits constituted his or her regular income. Overruling the Administration's objections, the court ordered the government to send the benefits directly to the trustee. *In re Buren*, 4 B.R. 109 (Bkrcty. M.D. Tenn. 1980). When the Administration appealed the seven orders, the district court consolidated the cases and affirmed. *In re Buren*, 6 B.R. 744 (M.D. Tenn. 1980).

## I. THE BANKRUPTCY REFORM ACT OF 1978

Chapter 13 of the Bankruptcy Code enables an individual to develop a plan under court supervision for the repayment of debts over an extended period of time. In a Chapter 13 repayment plan, unlike a Chapter 7 liquidation, a debtor may retain his property by agreeing to repay his creditors.

The benefit to the debtor of developing a plan of repayment under chapter 13, rather than opting for liquidation under chapter 7, is that it permits the debtor to protect his assets. In a liquidation case, the debtor must surrender his nonexempt assets for liquidation and sale by the trustee. Under chapter 13, the debtor may retain his property by agreeing to repay his creditors. Chapter 13 also protects a debtor's credit standing far better than a straight bankruptcy, because he is viewed by the credit industry as a better risk. In addition, it satisfies many debtors' desire to avoid the stigma attached to straight bankruptcy and to retain the pride attendant on being able to meet one's obligations. The benefit to creditors is self-evident: their losses will be significantly less than if their debtors opt for straight bankruptcy.

H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 118 (1977), *reprinted in* [1978] U.S. Code Cong. & Ad. News 5963, 6079 ("House Report").

Incorporating recommendations from scholars, legislators and bankruptcy judges who worked under the aegis of the Bankruptcy Commission, the 1978 Code was a comprehensive rewriting of federal bankruptcy law. Its history makes clear that one of Congress' major goals was to expand the class of debtors eligible to utilize Chapter 13. Under prior law, only a "wage earner"—defined by the old Code as "an individual whose principal income is derived from wages, salary, or commissions"<sup>1</sup>—could proceed under Chapter 13. The new Code extended eligibility to any "individual with regular income," 11 U.S.C. § 109(e), defined as "[an] individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under

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<sup>1</sup> Act of July 1, 1898, ch. 541, § 606 (amended 1938, 1950, 1959), formerly codified at 11 U.S.C. § 1006(8) (repealed 1978).

Chapter 13 . . .” 11 U.S.C. § 101(24). Congressional reports state that the purpose of section 101(24).

. . . is to expand substantially the kinds of individuals that are eligible for relief under chapter 13, Plans for Individuals with Regular Income, which is now available only for wage earners. The definition encompasses all individuals with incomes that are sufficiently stable and regular to enable them to make payments under a chapter 13 plan. Thus, individuals on welfare, social security, fixed pension incomes, or who live on investment incomes, will be able to work out repayment plans with their creditors rather than being forced into straight bankruptcy. Also, self employed individuals will be eligible to use chapter 13 if they have regular income. . . .

House Report at 311-12, 1978 U.S. Code, Cong. & Ad. News at 6269; S. Rep. No. 95-989, 95th Cong. 2d Sess. 24 (1978), *reprinted in* [1978] U.S. Code Cong. & Ad. News 5787, 5810 (“Senate Report”).

Consistent with section 101(24), Congress broadened the definition of “property of the estate” to include “all legal or equitable interests of the debtor in property as of the commencement of the case,” 11 U.S.C. § 541(a)(1), and “all property of the kind specified in [§ 541] . . . that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted . . .” 11 U.S.C. § 1306(a)(1). The bankruptcy court was given broad powers to “order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.” 11 U.S.C. § 1325(b).<sup>2</sup>

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<sup>2</sup> The Administration does not dispute that the Code nullifies any possible claim of sovereign immunity. 11 U.S.C. § 1325(b) permits the bankruptcy court “to order any entity from which the debtor receives income to pay all or part of such income to the trustee.” The United States and its agencies and instrumentalities are entities. 11 U.S.C. §§ 101(14) and 101(21). The bankruptcy courts,

Nowhere does the Code state that this definition of estate was meant to repeal section 407. Title III lists ten pages of other federal statutes that the Code repeals or modifies without mentioning section 407, Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2673, 2673-82; 11 U.S.C.A. at pp. 121-32, and the legislative history contains evidence that Congress knew that only an express provision could void the anti-assignment provisions of federal benefit statutes.<sup>3</sup>

Rather, the argument that social security benefits must be paid to the trustee regardless of the language of section 407 rests on a complicated construction of other provisions of the Code. Congress created mandatory and voluntary exemptions from the debtor's estate of property that would otherwise be included. Section 541(c)(2), for

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which possess "exclusive jurisdiction of all the property, wherever located, of the debtor," 28 U.S.C. § 1471(e), "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this Title." 11 U.S.C. § 105(a).

<sup>3</sup> During a committee hearing on Chapter 13 reform the following dialogue took place concerning the anti-assignment provision of the Employees Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1056(d)(1):

SENATOR BURDICK. What provision would you recommend to reconcile the provisions of the Employees Retirement Security Act of 1974 with section 4-503(c)(6) of the Commission's bill and 4-503(e)(5) of the judge's bill?

MR. CREEDON. This I guess has to do with the fact that ERISA provides that a pension benefit is not assignable and the Commission's bill would permit an exemption only with respect to that portion of the pension that is necessary for the bankrupt's maintenance.

I guess something could be put in the Bankruptcy Act to the effect that notwithstanding the provision in ERISA or otherwise, the trustee will be able to get at the excess.

Hearings Before the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, 94th Cong., 1st Sess. 678 (1975) (statement of John J. Creedon, American Life Insurance Association).

example, provides that the Code does not override the provisions of spendthrift trusts. Sections 522(b)(2)(A) and 522(d)(10) permit debtors to voluntarily omit social security benefits from their estates. Section 522(b)(2)(A) allows them to retain "any property that is exempt under Federal law . . ." Section 522(d)(10) states:

The following property may be exempted under subsection (b)(1) of this section:

(10) The debtor's right to receive—

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

\* \* \*

(C) a disability, illness, or unemployment benefit.

Section 407 is mentioned only once in the comments accompanying the two sections. The report on section 522(b)(2)(A) lists ten statutes that provide "items that may be exempted under Federal Laws other than title 11."<sup>4</sup> One is "Social security payments, 42 U.S.C. § 407

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<sup>4</sup> The list is identical in the House and Senate Reports:

—Foreign Service Retirement and Disability payments, 22 U.S.C. 1104;

—*Social security payments*, 42 U.S.C. 407;

—Injury or death compensation payments from war risk hazards, 42 U.S.C. 1717;

—Wages of fishermen, seamen, and apprentices, 46 U.S.C. 601;

—Civil service retirement benefits, 5 U.S.C. 729, 2265;

—Longshoremen's and Harbor Workers' Compensation Act death and disability benefits, 33 U.S.C. 916;

—Railroad Retirement Act annuities and pensions, 45 U.S.C. 228(L);

—Veteran's benefits, 45 U.S.C. 352(E);

...” These same deductions were available under the old Code.<sup>5</sup>

## II. ANTI-ASSIGNMENT PROVISIONS OF THE SOCIAL SECURITY ACT

Title II of the Social Security Act of 1935 established a social insurance program for wage earners and their dependents, to be paid out of a trust funded by the payroll taxes of wage earners and their employers. The current Title XVI, the product of the 1972 amendments that consolidated and expanded several previous programs, established a welfare program for needy individuals who are aged, blind, or disabled.

Section 407 is a strong and clear anti-assignment provision that has never been repealed or amended.

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable, or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or

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—Special pensions paid to winners of the Congressional Medal of Honor, 38 U.S.C. 3101; and

—Federal homestead lands on debts contracted before issuance of the patent, 43 U.S.C. 175.

House Report at 360; Senate Report at 75. (Emphasis added.)

<sup>5</sup> Act of July 1, 1898, ch. 541, § 6, 30 Stat. 548 (amended 1938), formerly codified at 11 U.S.C. § 24 (repealed 1978); see also 3 *Collier on Bankruptcy* ¶ 522.02 (15th ed. 1979 & Supp. 1983). In addition, the House Report at 360 states that section 522(b) “tracks current law”, while the Senate Report at 75 deems section 522(b) an innovation only in that

... It permits an individual debtor in a bankruptcy case a choice between exemption systems. The debtor may choose the Federal exemptions prescribed in subsection (d), or he may choose the exemptions to which he is entitled under other Federal law and the law of the State of his domicile. . . .



to the operation of any bankruptcy or insolvency law.

The committee reports discussing Title II never mention the anti-assignment provision; as the government concedes, they illuminate the provision only by reaffirming that the purpose of Title II is to provide a minimum level of security against the economic uncertainties of old age. See H.R. Rep. No. 615, 74th Cong., 1st Sess. (1935); S. Rep. No. 628, 74th Cong., 1st Sess. (1935). Nonetheless, the Supreme Court has stated unequivocally that section 407 "imposes a broad bar against the use of any legal process to reach all social security benefits. That is broad enough to bar all claimants . . ." *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 416 (1973) (barring New Jersey welfare agency from imposing lien on welfare recipient's lump sum retroactive federal disability payments to recover previously advanced state funds).

When Congress amended Title XVI it explicitly incorporated section 407 to protect the beneficiaries of the new and revised programs. 42 U.S.C. § 1383(d) (1). The committee reports that were written when the amendments were proposed in 1971 explained the rationale for the prohibition against assignments:

Your committee wishes to emphasize its strong belief that if the benefits which would be provided under this program are to meet the most basic needs of the poor, the benefits must be protected from seizure in legal processes against the beneficiary. Therefore, any amounts paid or payable under this program would not be subject to levy, garnishment, or other legal process, except the collection of delinquent Federal taxes. Also, entitlement to these benefits would not be transferable or assignable.

H.R. Rep. No. 92-231, 92d Cong., 1st Sess. 156 (1971), reprinted in [1972] U.S. Code Cong. & Ad. News 4989, 5142.

Other provisions of the Social Security Act further limit the payment of benefits to third parties and illustrate strong Congressional opposition to the diversion of social security funds. Title II benefits may be delivered to a third party under two circumstances only. Section 405(j) authorizes the Secretary of Health and Human Services to certify a representative payee "when it appears . . . that the interest of an applicant entitled to payment would be served thereby." And section 406 permits the Secretary to transmit up to twenty-five percent of past-due benefits to an attorney who successfully represented a claimant before the agency. Title XVI also permits payments to representative payee and attorneys, but the Secretary may prescribe maximum attorney fees and may not deduct the fees from past-due benefits. 42 U.S.C. § 1383(d). Congress believed that "to withhold such fees would be contrary to the purpose of the program." H.R. Rep. No. 92-231 at 156; 1972 U.S. Code Cong. & Ad. News at 5142.

Both provisions espouse a policy much different from the high priority the Bankruptcy Code accords attorney fees in the payment of claims against a debtor's estate. 11 U.S.C. §§ 503(b)(1)(C)(2) and 507(a)(1). Under Title II, such fees must be paid by the trustee directly to the attorney before or at the time of payment of the claims of other creditors. 11 U.S.C. § 1326. Save for the vague requirement that fees be "reasonable," 11 U.S.C. § 330(a)(1), an attorney representing a Chapter 13 debtor has a statutory right to have whatever amount he charges "withheld" from the debtor's estate and paid to him or her.

### III. REASONING

Despite the failure of the Bankruptcy Act to include section 407 in its lengthy list of statutes repealed or modified by the new Code and the dearth of legislative history indicating that such an appeal was intended, the



district court held that the Code repealed section 407 by implication. The court placed great emphasis on the bankruptcy court's unquestioned authority to garnish funds from the federal government and the Congressional intent to make Chapter 13 relief available to social security recipients. As a matter of statutory construction, it held that 11 U.S.C. sections 522 and 541 of the Code could not be reconciled with section 407, and that the more recent act was a "specific" statute that overruled the prior, more "general" provisions of section 407. We disagree with these conclusions.

The Supreme Court has held repeatedly that a "cardinal rule" of statutory construction is that repeals by implication are disfavored. *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 189-90 (1978); *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 154 (1976); *United States v. United Continental Tuna Corporation*, 425 U.S. 164, 168 (1976); *Morton v. Mancari*, 417 U.S. 535, 549-50 (1974).<sup>6</sup> Among the narrow exceptions to this commandment are

two well-settled categories of repeals by implication — (1) where provisions in the two acts are in irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the earlier one; and (2) if the later act covers the whole subject of the earlier one and is clearly intended as a

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<sup>6</sup> The reason and philosophy of the rule is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all.

substitute, it will operate similarly as a repeal of the earlier act. But, in either case, the intention of the legislature to repeal must be clear and manifest. . . .

*Radzanower v. Touche Ross & Co.*, *supra*, 426 U.S. at 148, quoting *Posadas v. National City Bank*, 296 U.S. 497, 503 (1936). Furthermore, the Court has been particularly reluctant to repeal by implication any statute that is not mentioned when a later act lists laws that it repeals or modifies. *Blanchette v. Connecticut General Insurance Corps. (Regional Rail Reorganization Cases)*, 419 U.S. 102, 129 (1974); *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 204 (1962); *Laurens Federal Savings and Loan v. South Carolina Tax Commission*, 365 U.S. 517, 523 (1961).

In deciding that sections 522 and 541 could not be reconciled with section 407, the district court found a repeal by implication of section 407 in Chapter 13 cases to be essential "so that the new Code is not emasculated. The new Code is a statutory scheme, the integrity of which must be preserved. . . . [R]emoval of social security recipients from the purview of Chapter 13 would block one of the main purposes of the 1978 revision." 6 B.R. at 749. The district court and appellees contend that a refusal to repeal section 407 would impinge upon the estate definition of section 541 and render the exemptions of section 522 moot and meaningless. The Court of Appeals for the Eleventh Circuit has accepted this argument. "A narrow implied limitation of section 407 appears to be the only way to effectuate the operation of a Chapter 13 plan for an individual whose regular income consists of social security benefits." *United States v. Devall*, 704 F.2d 1513, 1518 (11th Cir. 1983).

We think this states matters too broadly. Retaining section 407 in Chapter 13 cases limits the chapter's override of anti-assignment provisions, 11 U.S.C. § 541(c)(1), to those statutes specified elsewhere in the 1978 Act. And

while our reading of the Code also suggests that sections 522(b) (2) (A) and 522(d) (10) are hortatory reaffirmations of the uncontested fact that social security payments only become part of a debtor's estate if he chooses to include them, such a construction hardly presents the kind of "positive repugnancy" between sections 407 and Chapter 13 that must exist for a court to declare a repeal by implication. *Tennessee Valley Authority v. Hill*, *supra*, 437 U.S. at 190, quoting *Wood v. United States*, 41 U.S. (16 Pet.) 342, 363 (1842). Rather, it leaves unimpaired Congress' desire to open Chapter 13 to social security recipients whose income is "sufficiently stable and regular" to enable them to make regular payments. 11 U.S.C. § 101(24). As a practical matter, a willing debtor can simply sign his check over to the trustee. This averts burdensome administrative problems for the government, permits a needy debtor to retain the funds if they prove necessary for his or her immediate survival, prevents social security funds from being consumed by attorney fees, and obviates the need for intrusion on the important protection of social security benefits from attachment and garnishment.

Turning to the second possible basis for repeal by implication, it cannot fairly be said that "the later act covers the whole subject of the earlier one and is clearly intended as a substitute . . ." The district court accepted the trustee's contention that the new Code constitutes a "specific" statement concerning the rights of debtor social security recipients that overrode the more "general" section 407. Such an analysis misstates the nature of the conflict between the two statutes. This exercise in statutory construction concerns the validity of an attempt to assign social security benefits. The 1935 Act is addressed wholly to the topic of social security benefits and through section 407 specifically prevents judicial intrusion into the benefit payment process. The Bankruptcy Reform Act, on the other hand, addresses the rights and duties of debtors and creditors and ad-

dresses social security beneficiaries only to invite them to voluntarily participate in the Chapter 13 system. In no way does Chapter 13 cover the "whole subject" of the Social Security Act.

Indeed, the committees concerned with the Social Security system—the House Ways and Means and Senate Finance panels—played no part in drafting the new Code. The respective Judiciary Committees, on the other hand, possess no jurisdiction over social security and never seriously confronted the issue of benefit assignment. Thus the legislation they produced cannot reverse repeated expressions of congressional opposition to benefit garnishment. Consequently, the present legislative morass resembles the one untangled in *Tennessee Valley Authority v. Hill*, *supra*, 437 U.S. at 191-92. There the Court ruled that expenditure bills originating in the Appropriations Committees that contained funding for the Tellico Dam did not repeal by implication a provision of the Endangered Species Act that forbade construction of the dam because it would exterminate the "snail darter." Cryptic hints from the bankruptcy code-writing committees are no better a basis for repealing the welfare provision at issue here.

Finally, even if we read sections 522(b)(2)(A), 522(d)(10) and 541(c)(1) as expressing a policy of limiting anti-assignment provisions, the contrary message conveyed by the failure to include section 407 on the list of statutes repealed or modified by the Code precludes us from any finding that Congress' intention was "clear and manifest." *United States v. Borden Co.*, 308 U.S. 188, 198 (1939). The omission of section 407 from that list is all but *prima facie* proof that its repeal was not intended. As the Supreme Court wrote in *Sinclair Refining Company v. Atkinson*, *supra*, 370 U.S. at 209-10:

... The question of whether existing statutes should be continued in force or repealed is, under our sys-

tem of government, one which is wholly within the domain of Congress. When the repeal of a highly significant law is urged upon that body and that repeal is rejected after careful consideration and discussion, the normal expectation is that courts will be faithful to their trust and abide by that decision.

While the debate and discussion here was negligible, Congress made clear that it understood how the new Code would affect prior legislation when it assembled its list of voided or altered statutes. Nothing in the legislative history convinces us that the decision to omit section 407 from that list was inadvertant rather than deliberate.

Presented with no compelling indications that Congress intended to repeal section 407, "we have no power to change deliberate choices of legislative policy that Congress has made within its constitutional powers." *Sinclair Refining Company v. Atkinson*, *supra*, 370 U.S. at 15.

#### IV. SUBSEQUENT LEGISLATION

Having failed in 1978 to explicitly state its desire to repeal section 407 in Chapter 13 cases, Congress last year forthrightly declared its wish that the anti-assignment provision not be considered repealed. Pub. L. No. 98-21, § 335, 97 Stat. 65, enacted April 20, 1983, recodified section 407 as section 407(a) and added a new subsection 407(b), which provides:

(b) No other provision of law, enacted before, on, or after the date of the enactment of this section, may be construed to limit, supercede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

Pub. L. No. 98-21, § 335(a).

The legislative history indicates without question that Congress intended to reverse decisions like those on appeal here. The Conference Report notes:

Based on the legislative history of the Bankruptcy Reform Act of 1978, some bankruptcy courts have considered social security and SSI benefits listed by the debtor to be income for purposes of a Chapter XIII bankruptcy and have ordered SSA in several hundred cases to send all or a part of a debtor's benefit check to the trustee in bankruptcy.

\* \* \* \*

Section 407(b) specifically provides that social security and SSI benefits may not be assigned notwithstanding any other provision of law, including P.L. 95-598, the "Bankruptcy Reform Act of 1978".

While the provision is effective on enactment and is not to be applied retroactively, Pub. L. 98-21, § 335(c), its language buttresses the Court's conclusion in this case. "Subsequent legislation declaring the intent of an earlier statute is entitled to great weight in statutory construction." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 380-81 (1969). Section 407(b) thus strongly indicates that Chapter 13 was never intended to allow bankruptcy courts to compel the Administration to pay debtor's social security benefits directly to the trustee. *See Williams v. United States*, No. 82-3388 (9th Cir. June 13, 1983) (vacating deduction order and remanding case to bankruptcy court in light of amendment).

The decision of the district court is REVERSED. The bankruptcy court is directed to vacate the income deduction orders.



UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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No. 80-5427

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IN RE: DANNY RAY BUREN, *et al.*,  
*Debtors-Appellees.*

HENRY E. HILDEBRAND III, Standing Trustee,  
Chapter XIII,  
*Appellee,*

v.

THE SOCIAL SECURITY ADMINISTRATION,  
*Appellant.*

[Filed Jan. 23, 1984]

Before: KEITH and MARTIN, Circuit Judges; ALDRICH,  
District Judge.

JUDGMENT

On Appeal from the United States District Court  
for the Middle District of Tennessee

THIS CAUSE came on to be heard on the record from  
the said District Court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here  
ordered and adjudged by this court that the judgment of  
the said District Court in this case be and the same is  
hereby reversed. The bankruptcy court is directed to  
vacate the income deduction orders.

Each party is to bear his own costs.

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[Filed Feb. 17, 1984]

ENTERED BY ORDER  
OF THE COURT  
JOHN P. HEHMAN  
Clerk

/s/ John P. Hehman  
Clerk  
A True Copy.

Issued as Mandate: February 14, 1984  
Attest:

/s/ Audrey Crockett  
Deputy Clerk



UNITED STATES DISTRICT COURT  
M. D. TENNESSEE  
NASHVILLE DIVISION

Nos. 80-3229, 80-3226, 80-3320 to  
80-3323 and 80-3422

IN RE DANNY RAY BUREN

IN RE ANNIE LAURA JONES

IN RE MARIAN FRANCES HENDERSON

IN RE BOB DWAIN PENOVICH

IN RE ANETRICA KATHERINE WOODS

IN RE GUY T. and MAYBELLE ADELIA DRAKE

IN RE WALLACE F. HORNAL

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Keith M. Lundin, Chapter 13 Trustee in all cases,  
Nashville, Tenn.

Margaret M. Huff, Asst. U.S. Atty., Nashville, Tenn.,  
for Social Security Administration.

MEMORANDUM

WISEMAN, District Judge.

This appeal represents the consolidation of seven cases in which the Bankruptcy Court for the Middle District of Tennessee ordered the Social Security Administration to pay a portion of Chapter 13 debtors' monthly social security benefits to the Trustee in bankruptcy. In this case of first impression at the district court level, the issue is whether the Social Security Administration is subject to bankruptcy court income deduction orders that require payment of some or all of a debtor's social security benefits to the Trustee in bankruptcy. The resolution of this issue requires the reconciliation of two United States

statutory schemes: the Bankruptcy Reform Act of 1978 and the Social Security Act of 1935.

The relevant facts are the same in each of the consolidated cases. After October 1, 1979, the effective date of the new Bankruptcy Code, voluntary petitions for relief under Chapter 13 were filed with the United States Bankruptcy Court for the Middle District of Tennessee. Each debtor's plan included a provision for payment of social security benefits to the Trustee. The bankruptcy court issued income deduction orders, which required the Social Security Administration to forward all or a portion of the debtors' benefits to the Chapter 13 Trustee. The Social Security Administration has appealed these decisions, and this Court has stayed the bankruptcy court's orders pending the outcome of this appeal.

The case presents a confrontation between the new Bankruptcy Code's broad inclusions in what property is available to the estate and the Social Security Act's prohibition on the subjection of social security benefits to bankruptcy law. The conclusion of this Court is that the later-enacted statute effected a repeal of the Social Security Act insofar as the two are in conflict.

Chapter 13 of the Bankruptcy Reform Act is not limited to wage earner plans; it is entitled "Adjustment of Debts of an Individual with Regular Income." The class of persons to whom Chapter 13 is available has been dramatically expanded. The practice under old Chapter 13 did not live up to the basic purpose of permitting "an individual to pay his debts and avoid bankruptcy by making periodic payments to a trustee under bankruptcy court protection." S. Rep. No. 95-989, 95th Cong., 2d Sess. 12, *reprinted in* [1978] U.S. Code Cong. & Ad. News, pp. 5787, 5798. The problem with the old law was that it was limited to wage earners. According to the Senate report, one of the five aspects of the old law that caused it to be "basically and seriously defective" was that "it [did] not permit some individuals with regular income to qualify, such as small business owners or *social welfare program recipients*, because

their principal incomes do not come from wages, salary, or commissions." *Id.* at 13, [1978] U.S. Code Cong. & Ad. News at p. 5799 (emphasis added). The purpose of the new Chapter 13 was to solve these problems. "The new Chapter 13 will permit almost any individual with regular income to propose and have approved a reasonable plan for debt repayment based on that individual's exact circumstances." *Id.*

An "individual with regular income" for purposes of the Bankruptcy Code is an "individual whose income is sufficiently stable and regular to enable such individual to make payments under [a Chapter 13] plan." 11 U.S.C. § 101(24). Both the House and Senate committee reports analyzed this provision as applying to social security recipients. "[I]ndividuals on welfare, *social security*, fixed pension incomes, or who live on investment incomes, will be able to work out repayment plans with their creditors rather than being forced into straight bankruptcy." S. Rep. No. 95-989, *supra*, at 24 (emphasis added), [1978] U.S. Code Cong. & Ad. News at 5810; H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 312, *reprinted in* [1978] U.S. Code Cong. & Ad. News, pp. 5963, 6269 (emphasis added).

Obviously, the thrust of the Chapter 13 revision was to make its provisions available to a range of persons wider than the prior law. Expansion of the class to whom Chapter 13 is available comports with the basic legislative goal: to encourage financially overextended individual debtors to make greater use of voluntary repayment plans and thereby improve debtor relief, by allowing ratable distribution of future income without necessarily liquidating their nonexempt assets, and creditor recovery, by guaranteeing repayment of most, if not all, of the claims over an extended period. H.R. Rep. No. 95-595, 95th Cong., 1st Sess., 116-20. *See* 5 Collier on Bankruptcy ¶ 1300.02, at 1300-19 -1300-21 (15th ed. 1980). The clear purpose and intent of Congress was that social welfare recipients should not be denied the benefits of Chapter 13 plans.

An earlier congressional act, however, had prohibited the subjection of social security benefits to any bankruptcy law. United States Code section 407 of Title 42 provides that "none of the moneys paid or payable . . . under [Title II of the Social Security Act of 1935] shall be subject . . . to the operation of any bankruptcy or insolvency law."

— The purpose of the Social Security Act of 1935 was to provide a minimal level of economic security for the unemployed, the elderly, the homeless, and the blind.<sup>1</sup> The Congress could have reasonably feared that this relief might have been assigned away to creditors or otherwise disappear in the financial distress of the times. The present-day Chapter 13 was not extant in those days, however. The purpose of protecting individuals with social security benefits is equally well served by allowing the individual to use the benefits to get out of his or her debt-ridden state. Social security recipients may now use the Chapter 13 plan to commit themselves toward a fresh start. Liquidation is no longer the sole remedy available to social welfare recipients.

Under the new Bankruptcy Code, the concept of property of the estate is very broad. 11 U.S.C. § 541. Section 541(a)(1)<sup>2</sup> in conjunction with section 1306(a)(1)<sup>3</sup> in-

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<sup>1</sup> See e.g. 79 Cong.Rec. 9292 (1935) (remarks of Sen. Long); *id.* at 9283 (remarks of Sen. Wagner); *id.* at 9267 (remarks of Sen. Harrison); *id.* at 5825 (remarks of Rep. Haines); *id.* at 5768 (remarks of Rep. Beiter); *id.* at 5467 (remarks of Rep. Doughton); *id.* at 5455 (remarks of Rep. Greenwood).

<sup>2</sup> Section 541 provides that

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located:

(1) except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

<sup>3</sup> Section 1306 provides that

clude all legal and equitable interests owned by the debtor as of commencement of the case and acquired after the commencement of the case. Section 407 of Title 42 cannot prevent social security benefits from becoming property of the estate because section 541(c)(1)(A) of the Bankruptcy Code expressly makes legal or equitable interests part of the estate regardless of "any provision that restricts . . . transfer of such interests by the debtor." The concept of legal or equitable interests under the new Code no longer depends on nonbankruptcy law for its definition. *See* 4 Collier on Bankruptcy ¶ 41.02, at 541-9 -541-12 (15th ed. 1980). A debtor's interest in social security benefits is a legal or equitable interest.

Section 522 of the Code provides for exemptions that may be taken at the option of the debtor. The debtor's right to receive social security benefits may be exempted from the property of the estate, if he or she so desires. 11 U.S.C. § 522(d)(10)(A). The enactment of this exemption would be meaningless had Congress not intended that social security benefits were property of the estate in the first place.

The debtors in the instant cases have not elected to exempt their social security benefits. Nothing in the Bankruptcy Code requires them to take the exemptions. The Social Security Administration argues that this permissive provision cannot be allowed to stand in the face of the mandatory prohibition of 42 U.S.C. § 407. Citing congressional confusion,<sup>4</sup> the Administration urges that section 522(d)(10)(A) is, in effect, a nullity.

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<sup>3</sup> [Continued]

(a) Property of the estate includes, in addition to the property specified in section 541 of this title

(1) All property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under Chapter 7 or 11 of this title, whichever occurs first . . . .

<sup>4</sup> The Administration cites contradictory House and Senate statements regarding section 522(b). H.R.Rep.No. 95, 595, 95th Cong.,

Congress created the Bankruptcy Commission to study and recommend changes in the bankruptcy laws. 116 Cong. Rec. 27426 (1969). Following years of study by scholars, legislators, and bankruptcy judges, in 1978 extensive revisions of the Bankruptcy Code were enacted into law. One of the central purposes of the revision of Chapter 13 was to expand the availability of Chapter 13 plans. Occasional examples of congressional confusion cannot dissipate the obvious thrust of congressional purpose.

In support of its position, the Administration cites *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 93 S.Ct. 590, 34 L.Ed.2d 608 (1973), in which the Supreme Court held that because of 42 U.S.C. § 407 a state cannot reach a retroactive lump sum social security disability insurance payment even though the recipient agreed to reimburse the county welfare board for all public assistance received by him. *Philpott* is distinguishable, however, because the instant case involves a later act of Congress in which congressional intent to modify the restrictions placed on the transfer of social security benefits was clearly manifested.

This Court's duty is to construe statutes harmoniously when that can be reasonably done. The effect of the new Bankruptcy Code is to allow debtors to include social security benefits in the property of their estates. The Code does not require inclusion of social security benefits in the estate. If the Code required inclusion, 42 U.S.C. § 407 and the Code would be in direct conflict with each other. Prior special statutes may be repealed or limited by implication from the enactment of a later general statute when the legislative intent to effect a repeal or

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1st Sess. 360, reprinted in [1978] U.S.Code Cong. & Ad.News, pp. 5963, 6316 (section 522(b) described as "a significant departure from present law"); S.Rep.No.95, 989, 95th Cong., 2d Sess. 75, reprinted in [1978] U.S.Code Cong. & Ad.News, pp. 5787, 5861 (section 522(b) described as "track[ing] current law").



limitation is clearly expressed. D. Sands, *Statutes and Statutory Construction* § 23.15 (4th ed. 1972). Furthermore, a repeal or limitation may result when a comprehensive revision of a particular subject is promulgated. *Id.* The comprehensive revision of the bankruptcy laws by Congress and its clear intent to include social security benefits in the property of a debtor's estate, at the debtor's option, effects a repeal of 42 U.S.C. § 407 insofar as it conflicts with the Bankruptcy Code. The repeal, however, cannot be considered broader than is reasonably necessary to construe the statutes harmoniously. Therefore, the Court holds that notwithstanding the language of 42 U.S.C. § 407, social security benefits are subject to the operation of the bankruptcy laws only insofar as the debtor is allowed voluntarily to include the benefits as property of the estate and the bankruptcy proceeding, such as a Chapter 13 proceeding, can be entered into only by the voluntary action of the debtor.

The Administration argues that even if social security benefits may become subject to a Chapter 13 plan, the Administration cannot be required to pay monies to the Trustee. According to the Administration, the following reasons militate against requiring the Administration to comply with the Bankruptcy Code: (1) The government must be protected against the burdensome expense of issuing split checks; (2) payment to the Trustee is not allowed because he is not certified by the Secretary of the Social Security Administration; and (3) errors in payment would disrupt the functioning of the Social Security Administration.

The Administration cites nothing in support of its burdensome-expense argument. Without some extrinsic evidence of increased expense, this Court views the benefit of convenience to the debtor as outweighing any detrimental burden on the Administration. The income deduction order of the bankruptcy court validly enforces



the power of the court against the Social Security Administration as envisioned by section 1325(b).<sup>5</sup>

The Social Security Act provides for certification of "applicants," who may be allowed to receive social security benefits. 42 U.S.C. § 405(j). Parts 404.1601-.1610 of the Code of Federal Regulations provide in detail the procedures and guidelines to be followed when applying for certification of payment. The Bankruptcy Code provides for confirmation of a plan. 11 U.S.C. § 1325. That confirmation may include the issuance of an income deduction order. *Id.* § 1325(b). Because the Bankruptcy Code was a later-enacted comprehensive revision of the bankruptcy laws and of the powers of bankruptcy courts, the power of the bankruptcy court to issue income deduction orders to the Social Security Administration supersedes the power of the Secretary to limit applicants under the Social Security Act.

The Administration strenuously urges that because of inevitable overpayments and other mistakes, the administration of the Act would be disrupted and the government may even be required to make double payments. Without answering the query respecting double payment because it is not before this Court, the Administration's argument falls on its face. The Administration is not going to be excused from complying with a valid order of the bankruptcy court simply because the Administration might, or—taking the Administration's own dim view of its abilities—will, make errors in payment.

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<sup>5</sup> Pursuant to section 1325(b), the bankruptcy court may order an entity to make an income deduction order. A governmental unit is an entity. 11 U.S.C. § 101(15). The Social Security Administration is a governmental unit. Therefore, the court may issue income deduction orders against the Social Security Administration. Congress has waived sovereign immunity with respect to any claim against a governmental unit that is property of the estate. 11 U.S.C. § 106.

The Social Security Administration may have to change some of its administrative policies because of the enactment of the new Bankruptcy Code, but that is no reason to deny debtors the use of Chapter 13 plans. Even though Congress did not say it was specifically repealing the portion of section 407 that is inconsistent with the Bankruptcy Code, the intent of Congress clearly requires the Social Security Administration to adjust its procedures so that the new Code is not emasculated. The new Code is a statutory scheme, the integrity of which must be preserved. The purpose of the Social Security Act will not be disturbed. While mere adjustment in payment procedures, which the Administration has done in the child support and alimony areas,<sup>6</sup> is all that must be done to reconcile the Social Security Act with the Bankruptcy Code, removal of social security recipients from the purview of Chapter 13 plans would block one of the main purposes of the 1978 revision.

Therefore, the income deduction orders issued by the bankruptcy court are valid implementations of the congressional intent. The orders of the bankruptcy court are affirmed.

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<sup>6</sup> See 42 U.S.C. § 659.

27a

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

No. 80-3229

IN RE: DANNY RAY BUREN

No. 80-3226

ANNIE LAURA JONES

No. 80-3320

MARIAN FRANCES HENDERSON

No. 80-3321

BOB DWAIN PENOVICH

No. 80-3322

ANETRICA KATHERINE WOODS

No. 80-3323

GUY T. and MAYBELLE ADELIA DRAKE

No. 80-3422

WALLACE F. HORNAL

ORDER

In accordance with the memorandum contemporaneously filed herewith, it is ORDERED that the orders of the bankruptcy court are affirmed, and the stay heretofore entered is dissolved.

/s/ Thomas A. Wiseman, Jr.  
United States District Judge

UNITED STATES BANKRUPTCY COURT  
M. D. Tennessee

Bankruptcy No. 379-01863

IN RE DANNY RAY BUREN,

*Debtor.*

March 28, 1980

Keith M. Lundin, Waddey & Lundin Nashville, Tenn.,  
Trustee in Bankruptcy.

Hal D. Hardin, U.S. Atty., Middle District of Tenn.,  
Nashville, Tenn., for Social Security Administration.

ORDER

PAUL E. JENNINGS, Bankruptcy Judge.

This matter is before the Court upon motion of the Social Security Administration for relief from an order of the Court requiring benefits to be paid to the Trustee for the above-named Chapter 13 debtor.

The debtor is a disabled individual receiving certain retirement funds from the U.S. Army and disability benefits under Title II of the Social Security Act. He filed a petition for relief under Chapter 13 of the Bankruptcy Code on October 18, 1979. After confirmation of the debtor's amended plan, the Court entered two amended payroll deduction orders as follows: an order requiring the Commander of U.S. Army Finance and Accounting to pay to the Trustee \$153 per month from benefits due the debtor and an order requiring the Social Security Administration to pay to the Trustee \$350 per month from benefits due the debtor. Although monthly payments have been received from the U.S. Army, the Social Security Administration has filed a motion for relief from the Court's amended order.

Section 1325(b) of the Code states that after confirmation of a Chapter 13 plan ". . . the Court may order

any entity from whom the debtor receives income to pay all or any part of such income to the Trustee." 11 U.S.C. § 1325(b). The concept of "entity" in § 1325(b) is defined in § 101(14) of the Code as follows: "... 'entity' includes person, estate, trust, *governmental unit*;" 11 U.S.C. § 101(14). "... 'Governmental unit' in § 101(14) is further defined in § 101(21) as follows: "... 'governmental unit' means . . . department, agency, or instrumentality of the United States, . . . ." 11 U.S.C. § 101(21). The Social Security Administration is a "governmental unit" under § 101(21) and, therefore, is an "entity" under § 101(14).

The definition of "entity" in § 101(14) should be contrasted with the definition of person in § 101(30). Entity includes governmental units, while person does not. The Code carefully uses these terms. For example, note their use in § 109(b) and (c). Congress chose the word in § 1325(b) and intended to include governmental units. Section 1325(b) thus subjects the Social Security Administration to orders of the Bankruptcy Court requiring the payment of a debtor's income to the Trustee in Chapter 13 cases.

The expanded jurisdictional provisions of the new Bankruptcy Code make it clear that the Social Security Administration and other government units are subject to income deduction orders in Chapter 13 cases. If 11 U.S.C. § 1325(b) is not itself sufficient authority to support the income deduction order herein, there can be no doubt that § 105(a) of the Code and §§ 1471(a) and (e) of Title 28 of the United States Code give the Court authority to issue the challenged orders. 11 U.S.C. § 105(a) reads in full as follows:

(a) the bankruptcy court may issue any order, process, or judgment that is *necessary or appropriate* to carry out the provisions of this title.

Section 105(a) is an intentionally broad grant of authority to the United States Bankruptcy Courts to facilitate

the orderly administration of bankruptcy cases. This section is much broader than its predecessor, § 2a(15) of the prior Act. Unlike the restriction under prior law that an order of a bankruptcy court must be "necessary for the enforcement of the provisions of this title," § 105 authorizes the bankruptcy court to also issue orders "appropriate to carry out the provisions of this title." The power contained in § 105 is arguably more extensive than that contained in the All Writs Statute, 28 U.S.C. § 1651.

Section 105 complements the all encompassing grant of jurisdiction now contained in 28 U.S.C. § 1471, which provides in part:

(e) the bankruptcy court in which a case under Title 11 is commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case.

As outlined below, the debtor's right to receive social security benefits is property of the Chapter 13 estate. Such property is unquestionably within the jurisdiction of the United States Bankruptcy Court. Section 105(a) authorizes the Bankruptcy Court to issue orders "necessary and appropriate" to carrying out the provisions of the Chapter 13 plan. The plan herein calls for the payment of social security benefits to the Trustee for distribution to creditors.

The Social Security Administration cannot claim the immunity from income deduction orders which may have been available under prior law. As demonstrated in *United States v. Krakover*, 377 F.2d 104 (10th Cir. 1967), agencies of the United States government had realized some insulation from income deduction orders in Chapter 13 cases under prior law. In *Krakover* the 10th Circuit reasoned that § 658(2) of the prior Bankruptcy Act, 11 U.S.C. § 1058(2), limited the enforceability of income deduction orders in Chapter 13 cases to an "employer" other than the United States government. The

language of § 1325(b) of the Code and the definitions contained in § 101 clearly overrule the immunity analysis in *Krakover*.

Moreover, 11 U.S.C. § 106 specifically addresses the immunity issue as follows:

Except as provided in subsections (a) and (b) of this section and notwithstanding any assertion of sovereign immunity—

(1) a provision in this title that contains “creditor,” “entity” or “governmental unit” applies to governmental units;

Congress, thus, contemplated a waiver of the principle of sovereign immunity of the United States at least to the extent of subjecting government agencies to income deduction orders as “entities” under § 1325(b).

Congress contemplated that individuals receiving income from social security could be debtors under Chapter 13 of the new Bankruptcy Code. An “individual with regular income” who otherwise meets the requirements of § 109(e) of the Code is eligible to be a debtor under Chapter 13. 11 U.S.C. § 109(e). Section 101(24) of the Code defines “individual with regular income” to mean:

“... [an] individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under Chapter 13 of this title ...” 11 U.S.C. § 101(24).

The legislative history of § 101(24) reveals that Congress presupposed the use of social security benefits as income “sufficiently stable and regular” to provide funding for a Chapter 13 plan. The House Report relating to § 101(24) contains the following observation:

“Thus, individuals on welfare, *social security*, fixed pension incomes, or who live on investment incomes, will be able to work out repayment plans with their



creditors rather than being forced into straight bankruptcy.” [Emphasis added]. H.R. Rep. No. 95-595, 95th Cong., 1st Sess. at 312 (1977), U.S. Code Cong. & Admin. News 1978 at pp. 5787, 6269.

See, S. Rep. No. 95-989, 95th Cong., 2d Sess. 24, 119, 312 (1978). See also, 2 Collier on Bankruptcy ¶ 101.24 (15th Ed.). As demonstrated above, § 1325(b) authorizes the United States Bankruptcy Court in Chapter 13 cases to order any entity from whom the debtor receives income to pay all or a portion of that income to the Trustee. An order to the Social Security Administration to pay social security benefits to the Trustee in a Chapter 13 case was, thus, explicitly contemplated by Congress in the framing of the new Code.

The debtor’s future social security benefits are property of the estate in a Chapter 13 case. The expanded notion of “property of the estate” in Chapter 13 cases is unquestionably broad enough to include the debtor’s social security benefits. 11 U.S.C. § 1306 reads in part as follows:

(a) Property of the estate includes, in addition to the property specified in § 541 of this Title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted . . .

Section 541, 11 U.S.C. § 541, reads in part as follows:

(a) The commencement of the case . . . creates an estate. Such estate is comprised of all the following property, wherever located:

(1) Except as provided in subsections (b) and (c) (2) of this section, all *legal or equitable interests of the debtor in property as of the commencement of the case*. [Emphasis added].

Section 1306 thus expands the definition of property of the estate contained in § 541 to include all legal or equitable interests in property which the debtor acquires after the commencement of the case. Social security benefits to be paid to the debtor in the future would certainly constitute a "legal or equitable" interest in property and would become part of the Chapter 13 estate by operation of § 1306(a)(1).

The government's argument that social security benefits do not become part of the Chapter 13 estate by operation of non-bankruptcy law is refuted by the language of the Code and by the legislative history. In its memorandum, the government argues that the exemption from "execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law" contained in 42 U.S.C. § 407 acts to exempt social security benefits from the definition of property of the estate in Chapter 13 cases. Under § 70(a) of the prior Bankruptcy Act, this argument may well have been correct. Under prior law it was necessary to look to non-bankruptcy law—state and/or federal—to determine whether a debtor's interest in property became part of the bankruptcy estate. *See, e.g., Segal v. Rochelle*, 382 U.S. 375, 86 S.Ct. 511, 15 L.Ed.2d 428 (1966). Section 541 of the new Code eliminates virtually all of this dependence on non-bankruptcy law. Under § 541 the determination of what is property of the estate does not depend on whether non-bankruptcy law permits the debtor to transfer the property involved or would permit the debtor's creditors to reach the property. *See*, 4 Collier on Bankruptcy ¶ 541.02[1] (15th Ed.). *See, also*, 4 Collier on Bankruptcy ¶ 541.09 (15th Ed.). Section 541(a) includes as property of the estate *all interests* the debtor may have in property, without regard to whether the property or the debtor's interest in the property is transferrable or could be seized by creditors. The fact that non-bankruptcy law—here § 407 of the Social

Security Act—may limit the ability of creditors to attach or levy upon social security benefits in the non-bankruptcy context does not affect whether such benefits are property of the estate in a Chapter 13 case.<sup>1</sup>

To further buttress the general definition of property of the estate in § 541 and to further emphasize the abandoned reliance on other laws for a definition of property of the estate, § 541(c)(1)(A) declares that a debtor's interest in property becomes property of the bankruptcy estate "notwithstanding any provision—. . . that restricts or conditions transfer of such interest by the debtor . . ." 11 U.S.C. § 541(c)(1)(A). Thus, for purposes of determining what is and what is not property of the Chapter 13 estate, § 541(c)(1)(A) invalidates provisions in agreements or in non-bankruptcy law which pretend to restrict or condition the transfer of the debtor's interest in property. *See* 4 Collier on Bankruptcy ¶ 541.22 (15th Ed.); S. Rep. No. 95-989, 95th Cong., 2nd Sess. at 83 (1978). 42 U.S.C. § 407 is such a provision of non-bankruptcy law and cannot operate to deprive the Chapter 13 estate of social security benefits under §§ 541 and 1306.

The government's argument that 42 U.S.C. § 407 was omitted from the list of legislation specifically repealed by the Bankruptcy Reform Act and therefore still controls is not convincing. Restrictions on assignment, garnishment, attachment and the like are found in numerous other statutes. *See*, for example, 42 U.S.C. § 1717 protecting injury and death benefits; 38 U.S.C. § 770(g) protecting payments under Servicemen's Group Life Insurance or Veterans' Group Life Insurance; 38 U.S.C. § 3101 protecting payments made under any law administered by the Veterans' Administration; 33 U.S.C. § 775

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<sup>1</sup> The scheme of the Code is clear both from its provisions and its legislative history. Everything is property. Those items necessary for a fresh start will then be exempted to the debtor under 11 U.S.C. § 522. *See* page 113 herein.

protecting benefits for widows of lighthouse service personnel; 5 U.S.C. § 8130 protecting payments made under the Federal Employees' Compensation Act. None of these sections was specifically repealed. To hold that recipients of benefits under the above cited statutes are denied eligibility as Chapter 13 debtors is unthinkable. To eliminate availability of Chapter 13 relief to such a substantial segment of the populace does not accord with the obvious intent of Congress.

The government has voiced concern that allowing payment of social security benefits to the bankruptcy trustee may otherwise affect § 407 and the protection it offers the recipient and those dependent on him from claims of creditors. Chapter 13 relief is limited to *voluntary* petitions by the debtor. The benefits and purposes of § 407 are not altered by this Congressional enactment. The debtor is still protected from creditor action.

The government erroneously contends that the exemption provisions of § 522 of the Bankruptcy Code deprive the United States Bankruptcy Court of authority to order the Social Security Administration to submit social security benefits to the Trustee. There is no exception to the definition of property of the estate in § 541 or in § 1306 for property which may later be declared exempt by the debtor under § 522 or under non-bankruptcy law. As the legislative history demonstrates, Congress contemplated that property of the estate in a Chapter 13 case would include property needed for a "fresh start" which may or may not be exempted by the debtor. *See*, S. Rep. No. 95-989, 95th Cong., 2nd Sess., 82-83 (1978). Though the debtor herein may well be able to exempt his future social security benefits under § 522, the provisions of the section are permissive and the debtor has elected to submit his future social security benefits to the Chapter 13 Trustee for distribution to creditors. The exemption provisions of § 522 are personal to the debtor. Nothing in the Code would appear to permit the Social Se-

curity Administration to exercise an exemption on behalf of the debtor. The government's contention that the debtor's social security benefits are exempt property and, thus, are beyond the income deduction orders of this Court is without merit.

The elaborate provisions of § 522 permitting the debtor to exempt social security benefits from property of the estate demonstrate that Congress contemplated social security benefits to be part of the Chapter 13 estate unless and until claimed exempt by the debtor. Section 522(b) and the legislative history thereunder specifically reference the social security statute cited by the government herein—42 U.S.C. § 407. Section 522(b) states that an individual debtor “. . . may exempt from the property of the estate either—

(1) property that is specified under subsection (d) of this section . . . [or] . . .

(2) (A) any property that is exempt under *federal law* . . . or State or local law . . .” [Emphasis added].

Under the federal exemptions provided in subsection (d) of § 522, social security benefits are allowed as exempt at the debtor's option under subparagraph (10). Under the non-federal exemptions, the reference to “property that is exempt under federal law” in § 522(b) (2) (A) allows a debtor to take advantage of federal exemption provisions like 42 U.S.C. § 407. In fact, the legislative history to § 522(b) (2) (A) specifically identifies 42 U.S.C. § 407 as a benefit that may be exempted. *See* S. Rep. No. 95-989, 95th Cong., 2nd Sess. 75 (1978); H. Rep. No. 95-595, 95th Cong., 1st Sess. 360 (1977). There would be no reason for Congress to elaborately provide for the exemption of social security benefits under both the federal and non-federal exemption provisions of the new Bankruptcy Code if social security benefits were not to become property of the estate under §§ 541

and 1306. Obviously, Congress contemplated that social security benefits would become property of the estate, subject to permissive exemption by the debtor. There being no exercise of this exemption in the case at hand, the social security benefits remain property of the estate and remain subject to the income deduction orders of the Court.

Congress in the numerous ways above discussed has indicated recipients of government benefits may elect to obtain the benefits of Chapter 13 and may voluntarily have a portion of their income paid to the Trustee for the benefit of their creditors. Casual reference to the legislative history of Chapter 13 establishes Congressional attitude toward individuals desirous of paying their debts under Chapter 13. The legislative goal was to make it more attractive to debtors by increasing benefits to the debtor. Equally clear is the goal to make it more available.

It is not surprising that Congress clearly and unmistakably made it available to employees of the government and to others receiving benefits from the government.

The relief sought must be DENIED. The Social Security Administration is directed to comply with the prior order of the Court.

It is so ORDERED.



UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

Case No. 379-01863

IN RE: DANNY RAY BUREN AKA DANNY R. BUREN,  
*Debtor*

Social Security No. 558-90-1621

AMENDED ORDER TO EMPLOYER  
TO PAY TO THE TRUSTEE

Upon representations of the trustee, or other interested party, the Court finds that:

The above named debtor has pending in this Court a proceeding under Chapter 13 of the Bankruptcy Code and pursuant to the provisions of said statute and of the debtor's plan the debtor has submitted all future earnings and wages to the exclusive jurisdiction of this Court for the purpose of consummating the plan; and

That under the provisions of 11 U.S.C. Sec. 1325(b), the employer of the debtor may be required, upon the order of this Court, to pay over such portion of the wages or earnings of the debtor as may be needed to effectuate said plan, and that such an order is necessary and proper, now therefor,

IT IS ORDERED, that, until further order of this Court, the employer of said debtor

Social Security Administration  
1600 Hayes Street  
Nashville, TN 37203

deduct from the earnings of said debtor the sum of \$350.00 each month pay period beginning on the next pay day following the receipt of this order and to deduct a similar amount for each pay period thereafter, including any period for which the debtor receives periodic, or lump sum, payment for or on account of vacation, termi-



nation or other benefits arising out of present or past employment of the debtor, and to forthwith remit the sums so deducted to:

Keith M. Lundin, Trustee  
P.O. Box 2601  
Nashville, TN 37219  
Phone (615) 244-1101

IT IS FURTHER ORDERED, that said employer notify said trustee if the employment of said debtor be terminated and the reason for such termination.

IT IS FURTHER ORDERED, that all earnings and wages of the debtor, except the amounts required to be withheld by the provisions of any laws of the United States, the laws of any State or political subdivision, or by any insurance, pension or union dues agreement between employer and the debtor, or by the order of this Court, be paid to the aforesaid debtor in accordance with the employer's usual payroll procedure.

IT IS FURTHER ORDERED, that no deductions for account of any garnishment, wages assignment, credit union or other purpose not specifically authorized by this Court be made from the earnings of said debtor.

IT IS FURTHER ORDERED, that this order supersedes previous orders, if any, made to the subject employer in this cause.

Dated this December 11, 1979

/s/ Paul E. Jennings  
Bankruptcy Judge

xc: Debtor

Atty. for Debtor

Trustee

Social Security Adm.

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

Case No. 380-00797

IN RE: ANNIE LAURA JONES,  
*Debtor.*

Social Security No. 441-26-7914

ORDER TO PAY TRUSTEE

Upon representations of the trustee, or other interested party, the Court finds that:

The above named debtor has pending in this Court a proceeding under Chapter 13 of the Bankruptcy Code and pursuant to the provisions of the statute and of the debtor's plan the debtor has submitted all future income to the exclusive jurisdiction of this Court for the purpose of consummating the plan; and

That under the provisions of 11 U.S.C. § 1325(b), the entity from whom the debtor receives income may be required, upon the Order of this Court, to pay over such portion of the income of the debtor as may be needed to effectuate said plan, and that such an order is necessary and proper, now therefore,

IT IS ORDERED, that, until further order of this Court, the entity from whom the debtor receives income,

Social Security Administration  
1600 Hayes Street  
Nashville, TN 37202

deduct from the income of said debtor the sum of \$100.00 each monthly pay period beginning on the next pay day following the receipt of this order and to deduct a similar amount for each pay period thereafter, including any period for which the debtor receives periodic, or lump sum, payment for or on account of vacation, termination

or other benefits arising out of present or past employment of the debtor, or from any other benefits payable to the debtor and to forthwith remit the sums so deducted to:

Keith M. Lundin, Trustee  
P.O. Box 2601  
Nashville, TN 37219  
Phone 244-1101

IT IS FURTHER ORDERED, that said entity from whom the debtor receives income notify said trustee if the income of said debtor be terminated and the reason for such termination.

IT IS FURTHER ORDERED, that all income of the debtor, except the amounts required to be withheld by the provisions of any laws of the United States, the laws of any State or political subdivision, or by any insurance, pension or union dues agreement between the entity and the debtor, or by the order of this Court, be paid to the aforesaid debtor in accordance with usual payment procedure.

IT IS FURTHER ORDERED, that no deductions for account of any garnishment, wages assignment, credit union or other purpose not specifically authorized by this Court be made from the income of said debtor.

IT IS FURTHER ORDERED, that this order supersedes previous orders, if any, made to the subject entity in this cause.

Dated this 4-22-80.

/s/ Paul E. Jennings  
Bankruptcy Judge

xc: Debtor  
Atty. for Debtor  
Trustee  
Entity from whom the debtor receives income

Apr. 30, 1980 Certificate of Mailing

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

Case No. 380-00620

IN RE: MARIAN FRANCES HENERSON  
*Debtor.*

Social Security No. 323-10-4353

ORDER TO PAY TRUSTEE

Upon representations of the trustee, or other interested party, the Court finds that:

The above named debtor has pending in this Court a proceeding under Chapter 13 of the Bankruptcy Code and pursuant to the provisions of the statute and of the debtor's plan the debtor has submitted all future income to the exclusive jurisdiction of this Court for the purpose of consummating the plan; and

That under the provisions of 11 U.S.C. § 1325(b), the entity from whom the debtor receives income may be required, upon the Order of this Court, to pay over such portion of the income of the debtor as may be needed to effectuate said plan, and that such an order is necessary and proper, now therefore,

IT IS ORDERED, that, until further order of this Court, the entity from whom the debtor receives income,

Social Security Administration  
1600 Hayes Street  
Nashville, Tennessee

deduct from the income of said debtor the sum of \$172.00 each monthly pay period beginning on the next pay day following the receipt of this order and to deduct a similar amount for each pay period thereafter, including any period for which the debtor receives periodic, or lump

sum, payment for or on account of vacation, termination or other benefits arising out of present or past employment of the debtor, or from any other benefits payable to the debtor and to forthwith remit the sums so deducted to:

Keith M. Lundin, Trustee  
P.O. Box 2601  
Nashville, TN 37219  
Phone 244-1101

IT IS FURTHER ORDERED, that said entity from whom the debtor receives income notify said trustee if the income of said debtor be terminated and the reason for such termination.

IT IS FURTHER ORDERED, that all income of the debtor, except the amounts required to be withheld by the provisions of any laws of the United States, the laws of any State or political subdivision, or by any insurance, pension or union dues agreement between the entity and the debtor, or by the order of this Court, be paid to the aforesaid debtor in accordance with usual payment procedure.

IT IS FURTHER ORDERED, that no deductions for account of any garnishment, wages assignment, credit union or other purpose not specifically authorized by this Court be made from the income of said debtor.

IT IS FURTHER ORDERED, that this order supersedes previous orders, if any, made to the subject entity in this cause.

Dated this May 6, 1980.

/s/ Paul E. Jennings  
Bankruptcy Judge

xc: Debtor  
Atty. for Debtor  
Trustee  
Entity from whom the debtor receives income

May 6, 1980 Certificate of Mailing.

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

Case No. 380-00581

IN RE: BOB DWAIN PENOVICH

*Debtor.*

Social Security No. 113-22-8354

ORDER TO PAY TRUSTEE

Upon representations of the trustee, or other interested party, the Court finds that:

The above named debtor has pending in this Court a proceeding under Chapter 13 of the Bankruptcy Code and pursuant to the provisions of the statute and of the debtor's plan the debtor has submitted all future income to the exclusive jurisdiction of this Court for the purpose of consummating the plan; and

That under the provisions of 11 U.S.C. § 1325(b), the entity from whom the debtor receives income may be required, upon the order of this Court, to pay over such portion of the income of the debtor as may be needed to effectuate said plan, and that such an order is necessary and proper, now therefore,

IT IS ORDERED, that, until further order of this Court, the entity from whom the debtor receives income,

Social Security Administration  
1600 Hayes Street  
Nashville, Tennessee

deduct from the income of said debtor the sum of \$171.00 each monthly pay period beginning on the next pay day following the receipt of this order and to deduct a similar amount for each pay period thereafter, including any period for which the debtor receives periodic, or lump sum, payment for or on account of vacation, termination

or other benefits arising out of present or past employment of the debtor, or from any other benefits payable to the debtor and to forthwith remit the sums so deducted to:

Keith M. Lundin, Trustee  
P.O. Box 2601  
Nashville, TN 37219  
Phone 244-1101

IT IS FURTHER ORDERED, that said entity from whom the debtor receives income notify said trustee if the income of said debtor be terminated and the reason for such termination.

IT IS FURTHER ORDERED, that all income of the debtor, except the amounts required to be withheld by the provisions of any laws of the United States, the laws of any State or political subdivision, or by any insurance, pension or union dues agreement between the entity and the debtor, or by the order of this Court, be paid to the aforesaid debtor in accordance with usual payment procedure.

IT IS FURTHER ORDERED, that no deductions for account of any garnishment, wages assignment, credit union or other purpose not specifically authorized by this Court be made from the income of said debtor.

IT IS FURTHER ORDERED, that this order supercedes previous orders, if any, made to the subject entity in this cause.

Dated this May 8, 1980.

/s/ Paul E. Jennings  
Bankruptcy Judge

xc: Debtor  
Atty. for Debtor  
Trustee  
Entity from whom the debtor receives income

May 8, 1980 Certificate of Mailing.



UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

Case. No. 380-00711

IN RE: ANETRICA KATHERINE WOODS  
*Debtor.*

Social Security No. 410-72-3066

ORDER TO PAY TRUSTEE

Upon representations of the trustee, or other interested party, the Court finds that:

The above named debtor has pending in this Court a proceeding under Chapter 13 of the Bankruptcy Code and pursuant to the provisions of the statute and of the debtor's plan the debtor has submitted all future income to the exclusive jurisdiction of this Court for the purpose of consummating the plan; and

That under the provisions of 11 U.S.C. § 1325(b), the entity from whom the debtor receives income may be required, upon the Order of this Court, to pay over such portion of the income of the debtor as may be needed to effectuate said plan, and that such an order is necessary and proper, now therefore,

IT IS ORDERED, that, until further order of this Court, the entity from whom the debtor receives income,

Social Security Administration  
1600 Hayes Street  
Nashville, Tennessee

deduct from the income of said debtor the sum of \$150.00 each month pay period beginning on the next pay day following the receipt of this order and to deduct a similar amount for each pay period thereafter, including any period for which the debtor receives periodic, or lump

sum, payment for or on account of vacation, termination or other benefits arising out of present or past employment of the debtor, or from any other benefits payable to the debtor and to forthwith remit the sums so deducted to:

Keith M. Lundin, Trustee  
P.O. Box 2601  
Nashville, TN 37219  
Phone 244-1101

IT IS FURTHER ORDERED, that said entity from whom the debtor receives income notify said trustee if the income of said debtor be terminated and the reason for such termination.

IT IS FURTHER ORDERED, that all income of the debtor, except the amounts required to be withheld by the provisions of any laws of the United States, the laws of any State or political subdivision, or by any insurance, pension or union dues agreement between the entity and the debtor, or by the order of this Court, be paid to the aforesaid debtor in accordance with usual payment procedure.

IT IS FURTHER ORDERED, that no deductions for account of any garnishment, wages assignment, credit union or other purpose not specifically authorized by this Court be made from the income of said debtor.

IT IS FURTHER ORDERED, that this order supersedes previous orders, if any, made to the subject entity in this cause.

Dated this May 8, 1980.

/s/ Paul E. Jennings  
Bankruptcy Judge

xc: Debtor

Atty. for Debtor

Trustee

Entity from whom the debtor receives income

May 8, 1980 Certificate of Mailing.

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

Case No. 380-01038

IN RE: GUY T. DRAKE, JR.

*Debtor.*

Social Security No. 259-50-8498

ORDER TO PAY TRUSTEE

Upon representations of the trustee, or other interested party, the Court finds that:

The above named debtor has pending in this Court a proceeding under Chapter 13 of the Bankruptcy Code and pursuant to the provisions of the statute and of the debtor's plan the debtor has submitted all future income to the exclusive jurisdiction of this Court for the purpose of consummating the plan; and

That under the provisions of 11 U.S.C. § 1325(b), the entity from whom the debtor receives income may be required, upon the order of this Court, to pay over such portion of the income of the debtor as may be needed to effectuate said plan, and that such an order is necessary and proper, now therefore,

IT IS ORDERED, that, until further order of this Court, the entity from whom the debtor receives income,

Social Security Administration  
1600 Hayes Street  
Nashville, TN 37203

deduct from the income of said debtor the sum of \$279.10 each monthly pay period beginning on the next pay day following the receipt of this order and to deduct a similar amount for each pay period thereafter, including any period for which the debtor receives periodic, or lump sum, payment for or on account of vacation, termination

or other benefits arising out of present or past employment of the debtor, or from any other benefits payable to the debtor and to forthwith remit the sums so deducted to:

Keith M. Lundin, Trustee  
P.O. Box 2601  
Nashville, TN 37219  
Phone 244-1101

IT IS FURTHER ORDERED, that said entity from whom the debtor receives income notify said trustee if the income of said debtor be terminated and the reason for such termination.

IT IS FURTHER ORDERED, that all income of the debtor, except the amounts required to be withheld by the provisions of any laws of the United States, the laws of any State or political subdivision, or by any insurance, pension or union dues agreement between the entity and the debtor, or by the order of this Court, be paid to the aforesaid debtor in accordance with usual payment procedure.

IT IS FURTHER ORDERED, that no deductions for account of any garnishment, wages assignment, credit union or other purpose not specifically authorized by this Court be made from the income of said debtor.

IT IS FURTHER ORDERED, that this order supersedes previous orders, if any, made to the subject entity in this cause.

Dated this May 28, 1980.

/s/ Paul E. Jennings  
Bankruptcy Judge

xc: Debtor  
Atty. for Debtor  
Trustee  
Entity from whom the debtor receives income

May 28, 1980 Certificate of Mailing.

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

Case No. 380-01038

IN RE: MAYBELLE ADELIA DRAKE  
*Debtor.*

Social Security No. 411-46-8349

ORDER TO PAY TRUSTEE

Upon representations of the trustee, or other interested party, the Court finds that:

The above named debtor has pending in this Court a proceeding under Chapter 13 of the Bankruptcy Code and pursuant to the provisions of the statute and of the debtor's plan the debtor has submitted all future income to the exclusive jurisdiction of this Court for the purpose of consummating the plan; and

That under the provisions of 11 U.S.C. § 1325(b), the entity from whom the debtor receives income may be required, upon the order of this Court, to pay over such portion of the income of the debtor as may be needed to effectuate said plan, and that such an order is necessary and proper, now therefore,

IT IS ORDERED, that, until further order of this Court, the entity from whom the debtor receives income,

Social Security Administration  
1600 Hayes Street  
Nashville, TN 37202

deduct from the income of said debtor the sum of \$59.40 each monthly pay period beginning on the next pay day following the receipt of this order and to deduct a similar amount for each pay period thereafter, including any period for which the debtor receives periodic, or lump sum, payment for or on account of vacation, termination

or other benefits arising out of present or past employment of the debtor, or from any other benefits payable to the debtor and to forthwith remit the sums so deducted to:

Keith M. Lundin, Trustee  
P.O. Box 2601  
Nashville, TN 37219  
Phone 244-1101

IT IS FURTHER ORDERED, that said entity from whom the debtor receives income notify said trustee if the income of said debtor be terminated and the reason for such termination.

IT IS FURTHER ORDERED, that all income of the debtor, except the amounts required to be withheld by the provisions of any laws of the United States, the laws of any State or political subdivision, or by any insurance, pension or union dues agreement between the entity and the debtor, or by the order of this Court, be paid to the aforesaid debtor in accordance with usual payment procedure.

IT IS FURTHER ORDERED, that no deductions for account of any garnishment, wages assignment, credit union or other purpose not specifically authorized by this Court be made from the income of said debtor.

IT IS FURTHER ORDERED, that this order supersedes previous orders, if any, made to the subject entity in this cause.

Dated this May 28, 1980.

/s/ Paul E. Jennings  
Bankruptcy Judge

xc: Debtor

Atty. for Debtor

Trustee

Entity from whom the debtor receives income

May 28, 1980 Certificate of Mailing.

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

Case No. 380-00616

IN RE: WALLACE F. HORNAL

*Debtor.*

Social Security No. 415-10-7307

ORDER TO PAY TRUSTEE

Upon representations of the trustee, or other interested party, the Court finds that:

The above named debtor has pending in this Court a proceeding under Chapter 13 of the Bankruptcy Code and pursuant to the provisions of the statute and of the debtor's plan the debtor has submitted all future income to the exclusive jurisdiction of this Court for the purpose of consummating the plan; and

That under the provisions of 11 U.S.C. § 1325(b), the entity from whom the debtor receives income may be required, upon the order of this Court, to pay over such portion of the income of the debtor as may be needed to effectuate said plan, and that such an order is necessary and proper, now therefore,

IT IS ORDERED, that, until further order of this Court, the entity from whom the debtor receives income,

Office of the General Counsel  
Social Security Division  
Department of Health and Human Services  
Room 608, Altmeyer Building  
6401 Security Boulevard  
Baltimore, Maryland 21235

deduct from the income of said debtor the sum of \$139.00 each monthly pay period beginning on the next pay day following the receipt of this order and to deduct a similar amount for each pay period thereafter, including any period for which the debtor receives periodic, or lump



sum, payment for or on account of vacation, termination or other benefits arising out of present or past employment of the debtor, or from any other benefits payable to the debtor and to forthwith remit the sums so deducted to:

Keith M. Lundin, Trustee  
P.O. Box 2601  
Nashville, TN 37219  
Phone 244-1101

IT IS FURTHER ORDERED, that said entity from whom the debtor receives income notify said trustee if the income of said debtor be terminated and the reason for such termination.

IT IS FURTHER ORDERED, that all income of the debtor, except the amounts required to be withheld by the provisions of any laws of the United States, the laws of any State or political subdivision, or by any insurance, pension or union dues agreement between the entity and the debtor, or by the order of this Court, be paid to the aforesaid debtor in accordance with usual payment procedure.

IT IS FURTHER ORDERED, that no deductions for account of any garnishment, wages assignment, credit union or other purpose not specifically authorized by this Court be made from the income of said debtor.

IT IS FURTHER ORDERED, that this order supersedes previous orders, if any, made to the subject entity in this cause.

Dated this July 16, 1980.

/s/ Paul E. Jennings  
Bankruptcy Judge

xc: Debtor  
Atty. for Debtor  
Trustee  
Entity from whom the debtor receives income

Jul. 16, 1980 Certificate of Mailing.

(2)  
No. 83-1704

Office - Supreme Court, U.S.

FILED

MAY 30 1984

ALEXANDER L. STEVAS.

CLERK

**In the Supreme Court of the United States**

OCTOBER TERM, 1983

HENRY E. HILDEBRAND, III,  
STANDING CHAPTER 13 TRUSTEE, PETITIONER

v.

SOCIAL SECURITY ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

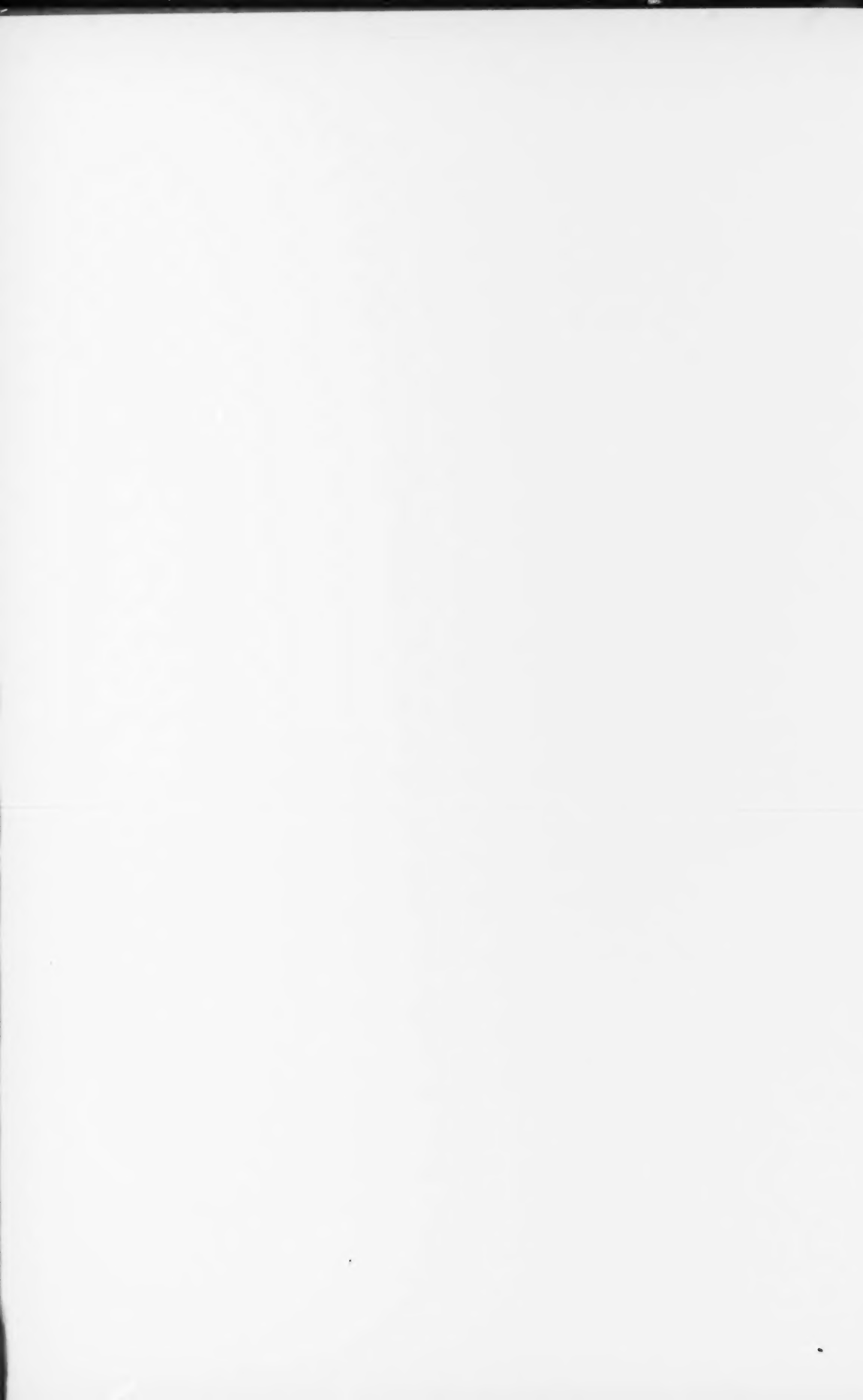
REX E. LEE  
*Solicitor General*  
*Department of Justice*  
*Washington, D.C. 20530*  
*(202) 633-2217*

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**In the Supreme Court of the United States**

OCTOBER TERM, 1983

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No. 83-1704

HENRY E. HILDEBRAND, III,  
STANDING CHAPTER 13 TRUSTEE, PETITIONER

v.

SOCIAL SECURITY ADMINISTRATION

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE SIXTH CIRCUIT*

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**MEMORANDUM FOR THE RESPONDENT IN OPPOSITION**

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Petitioner contends that 42 U.S.C. 407, the anti-assignment provision of the Social Security Act, does not prohibit a bankruptcy court from entering an income deduction order directing the Social Security Administration (SSA) to pay all or part of a debtor's social security benefits directly to the bankruptcy trustee to help fund a plan for repayment of debts under Chapter 13 of the Bankruptcy Code, 11 U.S.C. 1301 *et seq.*

1. Seven individuals who receive either social security disability payments under Title II of the Social Security Act, 42 U.S.C. (& Supp. V) 401-433, or Supplemental Security Income (SSI) benefits under Title XVI of the Act, 42 U.S.C. (& Supp. V) 1381-1383, filed voluntary petitions under Chapter 13 of the Bankruptcy Code with the United States Bankruptcy Court for the Middle District of

Tennessee. The court ordered the government to send the benefits in each case directly to petitioner, the standing trustee for Chapter 13 cases in that district. (*In re Buren*, 4 Bankr. 109; Pet. App. 28a-37a). The district court affirmed on appeal by the government (Pet. App. 18a-26a; 6 Bankr. 744). Both courts found that the Bankruptcy Reform Act of 1978 evinced an intent to subject the government to such income deduction orders in connection with Chapter 13 plans. Specifically, 11 U.S.C. 1325(b) provides that the bankruptcy court may order "any entity," which is defined to include a governmental unit (see 11 U.S.C. 101(14) and (21)), from whom the debtor receives income to pay that income to the trustee. See Pet. App. 19a-20a, 28a-31a.

2. The court of appeals reversed (Pet. App. 1a-15a; 725 F.2d 1080). The court held that Section 207 of the Social Security Act, 42 U.S.C. 407, which provides that "none of the moneys paid or payable or rights existing" under Title II of the Act "shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law;"<sup>1</sup> was not repealed by implication by the Bankruptcy Reform Act of 1978. Hence, existing law prohibited the income deduction orders entered by the bankruptcy court. The court of appeals stated that repeals by implication are highly disfavored and that the circumstances here did not support such a repeal. The court relied in particular on the facts that there is no "positive repugnancy" between the statutes, that the later statute addresses a different subject than the first and cannot be considered a substitute for the Social Security Act, and that 42 U.S.C. 407 is not included in the long list of statutes expressly repealed by the Bankruptcy Reform Act of 1978. See Pet. App. 11a-14a.

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<sup>1</sup>This provision is made applicable to the SSI program by 42 U.S.C. 1383(d)(1).

In addition, the court of appeals relied on an amendment to Section 207 enacted in April 1983. That amendment added a new subsection (b) to 42 U.S.C. 407 to make it unequivocally clear that Section 207 has not been repealed by implication by any intervening legislation.<sup>2</sup> The court found that this amendment, while not dispositive of this case because it was not given retroactive effect,<sup>3</sup> further supported the court's conclusion because it "strongly indicates that Chapter 13 was never intended to allow" income deduction orders in connection with social security payments (Pet. App. 15a).

3. Plainly, there is no reason for this Court to review the decision below. The 1983 amendment codifies the precise result reached by the court of appeals, and therefore there can be no doubt whatsoever that social security benefits henceforth may not be subject to Chapter 13 income deduction orders. The only question conceivably left open by the amendment is the validity of income deduction orders entered prior to April 1983. The court of appeals apparently assumed that the prospective nature of the amendment precluded its application to preexisting income deduction

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<sup>2</sup>The new subsection provides:

(b) No other provision of law, enacted before, on, or after the date of the enactment of this section, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

Pub. L. No. 98-21, § 335(a), 97 Stat. 130. The Conference Report on the amendment states that this amendment is designed specifically to prevent the bankruptcy courts from issuing Chapter 13 income deduction orders to SSA. H.R. Rep. 98-47, 98th Cong., 1st Sess. 153 (1983).

<sup>3</sup>Section 335(c) of the law amending 42 U.S.C. 407 provides: "The amendments made by subsection (a) shall apply only with respect to benefits payable or rights existing under the Social Security Act on or after the date of the enactment of this Act." 97 Stat. 130.



orders. Even if that view were correct,<sup>4</sup> the issue presented here is of virtually no continuing significance. By the time this case would be decided by this Court, most of the Chapter 13 repayment plans confirmed prior to April 1983 would no longer be operating,<sup>5</sup> and hence there would be few outstanding pre-April 1983 orders directing the payment of social security benefits directly to the bankruptcy trustee.<sup>6</sup>

In any event, quite apart from the operation of the 1983 amendment, the decision below is correct. The amendment itself strongly indicates that Congress never intended to

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<sup>4</sup>In our view, even orders entered prior to April 1983 cannot be enforced after April 1983 because the amendment by its terms applies to "benefits payable \* \* \* under the Social Security Act on or after the date of the enactment of this Act." Pub. L. No. 98-21, § 335(c), 97 Stat. 130. Thus, while the prospective nature of the amendment would prevent recoupment of monies paid to trustees prior to April 1983, it would appear to justify SSA's refusal to make such payments after the effective date. This issue, however, was not litigated in the court of appeals and is not presented here.

<sup>5</sup>In the absence of special court approval, for cause, the maximum permissible length of a Chapter 13 repayment plan is three years. 11 U.S.C. 1322(c).

<sup>6</sup>For this reason, the alleged conflict between the decision below and *United States v. Devall*, 704 F.2d 1513 (11th Cir. 1983) (see Pet. 6), does not warrant review. Moreover, it is questionable, in light of the 1983 amendment, whether the Eleventh Circuit would follow *Devall* in the unlikely event that this issue involving the validity of a pre-amendment order were to arise again. *Devall* was decided shortly after the 1983 amendment was enacted, and the court evidently was unaware of the amendment. The court subsequently declined to reconsider its decision, stating that the amendment should be brought to the attention of the bankruptcy court in the first instance. 714 F.2d 1068 (11th Cir. 1983). Thus, it is possible that the Eleventh Circuit, as did the court below, would find that the passage of the 1983 amendment indicates that Congress never intended to permit assignment of social security benefits to a Chapter 13 bankruptcy trustee, or, alternatively, that a preexisting income deduction order, even if valid when issued, would no longer be effective after April 1983.

repeal 42 U.S.C. 407 in connection with Chapter 13 plans. And, given the failure of the Bankruptcy Reform Act of 1978 to address social security explicitly or to include 42 U.S.C. 407 in the list of statutes repealed, ordinary principles of statutory construction militate against finding an implied repeal here. See Pet. App. 11a-14a. As the court of appeals explained (*id.* at 12a), the assignment of social security benefits to the trustee is hardly essential to the operation of Chapter 13; the same result can be achieved by having the debtor sign over his social security check to the trustee.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE  
*Solicitor General*

MAY 1984